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Sheehy Enterprizes, Inc. and Laborers' International Union of North America, State of Indiana District Council, a/w Laborers' International Union of North America. Case 25–CA–30583

August 12, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND BECKER

On January 30, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 353 NLRB No. 84 (2009).¹ Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Seventh Circuit, and the General Counsel filed a cross-petition for enforcement. On April 20, 2010, the court of appeals denied the Respondent's petition for review and granted the General Counsel's cross-petition for enforcement. 602 F.3d 839. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, on July 21, 2010, the court of appeals granted a petition for rehearing and remanded this case to the Board "so that a properly constituted panel can resolve this dispute."

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.²

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 353 NLRB No. 84, which is incorporated herein by reference.³

Dated, Washington, D.C. August 12, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Craig Becker, Member

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² Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

³ We find it unnecessary to rely on *Sawgrass Auto Mall*, 353 NLRB No. 40 (2008), cited in fn. 1 of the prior decision.